



1772197 - R8 SDMS

May 4, 2016

Kathryn Cerise, Remedial Project Manager
Superfund Remedial Section
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Andrea Madigan
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

***Re: Request for Decision on Dispute Regarding Present Reimbursement for Costs of
the Work Performed Under the AOC for Richardson Flat OU2/OU3 (AOC)***

Dear Kathryn and Andrea:

Through materials provided to EPA under a cover letter of August 25, 2015, United Park City Mines Company (United Park) submitted a request for reimbursement of qualifying costs incurred by United Park for Work completed in 2014 under the AOC and the related EE/CA Work Plan as required under the AOC. A copy of that submittal (Request) is attached as Schedule 1.

On or about September 14, 2015, EPA declined to process the Request as set forth in a letter of that date. A copy of the declination letter (Declination) is attached as Schedule 2.

By letter dated October 28, 2015 (Response), United Park responded to the Declination, and EPA replied to the Response by letter dated November 13, 2015 (Reply). Copies of the Response and the Reply are attached as Schedules 3 and 4, respectively.

During the exchange of all of the foregoing correspondence and materials, EPA and United Park engaged in discussions in an effort to resolve this matter. EPA and United Park have been unable to reach agreement regarding this dispute, and United Park requests that this matter be submitted to an EPA management official capable of providing a fair and neutral evaluation for a written decision. United Park requests a meeting to present this matter to the EPA official.

For your convenience, also attached to this letter is a one page summary of the dispute. We appreciate your consideration of this matter, and look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry C. Gee".

Kerry C. Gee, Vice President

Summary of the Dispute

United Park has incurred substantial reimbursable costs in connection with ongoing performance of the Work under the AOC. Under the express terms of the AOC, funds are made available "for disbursement to United Park as partial reimbursement for performance of the Work". The AOC clearly addresses the way in which annual reimbursement requests are to be processed once the RAWP is completed and annual "Work Milestones" are established thereunder. The AOC is silent, however, as to the way in which an annual reimbursement request is to be processed for reimbursable costs associated with "Work" that is required to be performed prior to the RAWP.

The EPA's position is that no present reimbursement should be made because there is no RAWP yet (and no annual Work Milestone thereunder). However, as noted in the Submittal and the Response:

1. The definition of "Work" includes not only those activities United Park is required to perform under the RAWP (which ties to Work Milestones), but also expressly includes all activities under the EPA-approved EE/CA Work Plan (which are not tied to Work Milestones).
2. Accordingly, the qualified costs submitted for reimbursement under the Request are for activities specifically contemplated under the AOC and the EE/CA Work Plan, which activities by their very nature and definition were required to be performed prior to the RAWP and any Work Milestone.
3. Some examples of these mandatory and clearly identified pre-RAWP activities include work related to the SAP, FSP, QAPP, HASP, NRD, Sampling, Analytical, and Legal Work for Property Access.

In preparing the Request, United Park very carefully:

- a. reviewed all items to insure that only those that qualified for reimbursement under the express definition of "Work" were included in the submittal (a summary of "Work" under the EE/CA Work Plan is attached to the Response - Schedule 3); and
- b. prepared and submitted the Request in both the form and manner that is consistent with the express requirements of the AOC, namely:
 - a. an annual reimbursement request (for 2014 costs in this instance)
 - b. including a complete and accurate summary of the necessary costs incurred and paid by United Park for the Work covered by the Request (see the attachments to the Request - Schedule 1), excluding those costs not eligible for reimbursement per AOC Paragraph 81.d
 - c. and including a signed Certificate per AOC Paragraph 81.b (see the attachments to the Request - Schedule 1).

United Park believes the qualified costs submitted under the Request, which are clearly reimbursable under the AOC and which were for Work required to be performed prior to the RAWP, should be presently reimbursed.

SCHEDULE 1



August 25, 2015

Ms. Kathryn Hernandez, RPM
Superfund Remedial Section, 8EPR-RA
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Ms. Andrea Madigan
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Re: Cost Reimbursement for Work Performed During Calendar Year 2014

Dear Kathy and Andrea:

In March of 2014, the Administrative Order on Consent (AOC) for Richardson Flat Operable Units 2 and 3 became effective when it was signed by the EPA. Since that time, United Park City Mines Company (United Park) has completed certain Work under the AOC and the related EE/CA Work Plan, which Work includes tasks such as the preparation of the Sampling and Analytical Plan and the Health and Safety Plan, rounds of Surface and Groundwater sampling, and various deliverables to the EPA.

Under the AOC, funds are made available to reimburse United Park for costs it incurs in connection with the Work. The Work includes all activities under the EE/CA Work Plan. The attachments to this cost reimbursement request describe the Work completed by United Park in 2014 under the AOC and the EE/CA Work Plan.

From the effective date of the AOC through December 31, 2014, United Park spent \$191,408.22 (2014 Costs) on various tasks that constitute Work performed during that time period (2014 Work). A list of the 2014 Costs by category is attached. Also attached is a summary of the 2014 Work, together with a certification by Peter Palmeri, the equivalent of United Park's CFO.

This reimbursement request is for \$143,556.17, which is seventy-five percent of the 2014 Costs. Payment instructions will be forwarded separately.

Please let me know if I can help with regard to any of these items.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry C. Gee", is written over the typed name and title.

Kerry C. Gee
Vice President

2014 Costs by Category

1.	Analytical	\$24,148.00
2.	Outside Consulting for NRD	\$4,791.85
3.	Outside Consulting for SAP and FSP	\$11,495.00
4.	Outside Consulting for QAPP, SAP, FSP, HASP, NRD Work, Sampling and Sampling Oversight by Consultants	\$104,173.99
5.	Supplies	\$23.88
6.	UPK Personnel Performing Work	\$6,841.16
7.	Legal Work for Property Access	\$39,934.34
	Total	\$191,408.22

Cost Summary and Certification

Summary

Below is a summary of the necessary 2014 Costs incurred by United Park City Mines Company (United Park) for the 2014 Work. The numbered categories below correspond to the related attachment titled "2014 Costs by Category".

1. Analytical.

This category includes laboratory costs and fees paid to an outside analytical laboratory in connection with the analysis of soil, water and sediment samples taken at OU2 / OU3.

2. Outside Consulting for NRD.

This category includes outside consulting fees and costs paid to outside consultants in connection with (i) the preparation of documents as related to NRDs associated with OU2 / OU3, (ii) meetings with state and federal agencies, and (iii) related matters.

3. Outside Consulting for SAP and FSP.

This category includes outside consulting fees and costs paid to outside consultants in connection with (i) the preparation of documents as related to the SAP and the FSP, (ii) the review and evaluation of sampling-related data and information, (iii) discussions with EPA, and (iv) related matters.

4. Outside Consulting for QAPP, SAP, FSP, HASP, NRD Work, Sampling and Sampling Oversight by Consultants.

This category includes outside consulting fees and costs paid to outside consultants in connection with (i) the review and evaluation of studies and sampling-related information, (ii) site investigations and the performance of soil, water and sediment sampling, (iii) work on documents related to the AOC, EE/CA Work Plan, CSM, NRDs, Workplan, QA Report, SAP, QAPP, HASP and FSP, (iv) discussions and meetings with EPA and other federal and state agencies, and (v) related matters.

5. Supplies.

This category includes costs for gloves, and binder materials for EPA deliverables.

6. UPK Personnel Performing Work.

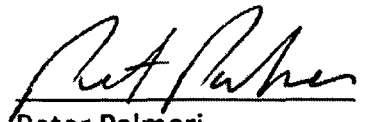
This category includes the wages paid to United Park employees for actual hours spent performing the 2014 Work.

7. Legal Work for Property Access.

This category includes the fees and costs paid to outside counsel in connection with obtaining access from numerous third party landowners at OU2 / OU3, and related matters.

Certification

To the best of my knowledge, after thorough investigation and review of UPCM's documentation of costs incurred and paid for the Work performed pursuant to the Settlement Agreement, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

A handwritten signature in black ink, appearing to read "Peter Palmeri", is written over a horizontal line.

Peter Palmeri

for and on behalf of

United Park City Mines Company

Documents Reviewed

1. Analytical

- American West Analytical Laboratories - Invoice No. 1411161 – Dated 12/10/14
- American West Analytical Laboratories - Invoice No. 1411141 – Dated 12/10/14
- American West Analytical Laboratories - Invoice No. 1411184 – Dated 12/10/14

2. Outside Consulting for NRD

- Doug Reagan & Associates, LLC – Invoice No. 13 (and supporting receipts) – Dated 05/05/14

3. Outside Consulting for SAP and FSP

- Terra Technologies Environmental Services, LLC – Invoice No. 509 – Dated 04/30/14
- Terra Technologies Environmental Services, LLC – Invoice No. 529 – Dated 06/28/14
- Terra Technologies Environmental Services, LLC – Invoice No. 541 – Dated 08/01/14
- Terra Technologies Environmental Services, LLC – Invoice No. 550 – Dated 09/02/14
- Terra Technologies Environmental Services, LLC – Invoice No. 578 – Dated 12/01/14
- Terra Technologies Environmental Services, LLC – Invoice No. 589 – Dated 12/26/14

4. Outside Consulting for QAPP, SAP, FSP, HASP, NRD Work, Sampling and Sampling Oversight by Consultants, and Planning

- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1134 – Dated 03/18/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1144 – Dated 03/31/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1157 – Dated 04/28/14

- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1161 – Dated 05/12/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1175 – Dated 06/09/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1181 – Dated 06/23/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1185 – Dated 07/07/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1195 – Dated 08/04/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1201 – Dated 08/19/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1206 – Dated 09/02/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1210 – Dated 09/15/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1214 – Dated 09/30/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1227 – Dated 10/27/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1231 – Dated 11/10/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1236 – Dated 11/24/14
- Resource Environmental Management Consultants, Inc. – Invoice No. 10-1245 – Dated 12/22/14

5. Supplies

- Staples Receipt – Dated 06/17/14
- The Home Depot Receipt – Dated 09/17/14

6. UPK Personnel Performing Work

- Payroll records

7. Legal Work for Property Access

- Holland & Hart – Invoice No. 1303138 – Dated 04/10/14
- Holland & Hart – Invoice No. 1309251 – Dated 05/08/14

- Holland & Hart – Invoice No. 1316244 – Dated 06/03/14
- Holland & Hart – Invoice No. 1322869 – Dated 07/07/14
- Holland & Hart – Invoice No. 1332219 – Dated 08/15/14
- Holland & Hart – Invoice No. 1338876 – Dated 09/16/14
- Holland & Hart – Invoice No. 1345232 – Dated 10/14/14
- Holland & Hart – Invoice No. 1345231 – Dated 10/14/14
- Holland & Hart – Invoice No. 1353027 – Dated 11/18/14
- Holland & Hart – Invoice No. 1353026 – Dated 11/18/14
- Holland & Hart – Invoice No. 1359973 – Dated 12/16/14
- Holland & Hart – Invoice No. 1369817 – Dated 01/06/15

SCHEDULE 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

September 14, 2015

Ref: 8EPR-SR

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kerry Gee
Vice President, United Park City Mines
P.O. Box 1450
Park City, Utah 84060

Re: Request for cost reimbursement pursuant to CERCLA Administrative Order on Consent (AOC), Docket Number CERCLA-08-2014-0003, for Operable Units 2/3 of the Richardson Flat Site in Park City, Utah (Site).

Dear Mr. Gee:

This letter is in response to your August 25, 2015 request for reimbursement (August 25 Request) pursuant to the above-mentioned AOC. According to the terms of the AOC, the August 25 Request is premature, and ineligible for reimbursement. Paragraph 81(a) of the AOC outlines the reimbursement process, and states, "Within sixty (60) Days after issuance of EPA's written confirmation that a Work Milestone has been satisfactorily completed, UPCM shall submit to EPA a Cost Summary and Certification... covering the Work performed pursuant to this Settlement Agreement up to the date of completion of that Work Milestone." "Work Milestones" are defined as "all activities and tasks necessary to complete components of the Removal Action to be defined in the Removal Action Work Plan and shall be established for each annual construction season."

UPCM is still preparing the engineering evaluation/cost analysis (EE/CA) that will inform the cleanup options for the Site. Accordingly, EPA has not issued an Action Memorandum documenting the required Removal Action. There is not yet a Removal Action Work Plan, and no Work Milestones. EPA cannot reimburse UPCM for costs outside the scope defined in the AOC, and declines the August 25 Request. Please feel free to call me at 303.312.6101 if you would like to discuss this matter further.

Sincerely,

Kathryn Cerise
Remedial Project Manager



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SCHEDULE 3

October 28, 2015

VIA EMAIL AND U.S. MAIL

Andrea Madigan
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Reimbursement Request

Dear Andrea:

United Park City Mines Company has received your letter of September 14, 2015, which was sent in response to UPCM's recent reimbursement request ("Request"). The Request is for reimbursement of certain qualifying costs incurred by UPCM for Work performed during calendar year 2014. As explained below, the Request is not premature, nor are the particular costs submitted in the Request ineligible for reimbursement.

Under the AOC, the funds in the Richardson Flat Disbursement Account are made available "for disbursement to UPCM as partial reimbursement for performance of the Work". The definition of "Work" under Paragraph 12 of the AOC includes:

- (i) All activities UPCM is required to perform under the Removal Action Work Plan, which ties to Work Milestones as your letter indicates; and
- (ii) "All activities UPCM is required to perform under the EPA-approved EE/CA Work Plan". Costs for Work related to the EE/CA Work Plan are not tied to Work Milestones.

A summary list of "Work" specified under the EE/CA Work Plan is attached, and the Work performed by UPCM in 2014 (and so far in 2015) clearly meets this definition of Work. Accordingly, reimbursable items under the AOC include the following, which have been submitted under the Request:

- (i) Costs incurred for activities performed under the EE/CA Work Plan (see above and attached).



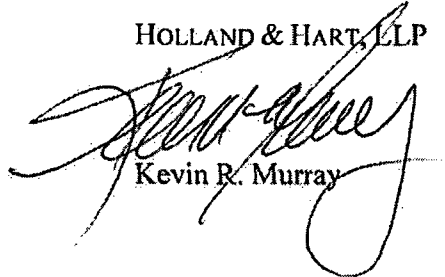
- (ii) "Attorney's fees and costs necessarily related to obtaining access" (see Paragraph 81.d.(c)).
- (iii) "Costs that represent the work of employees of UPCM directly performing the Work" (see Paragraph 81.d.(f)).

As noted above and in your letter, reimbursements for future Work associated with the RAWP are tied to Work Milestones under the RAWP which of course has yet to be prepared. On the other hand, reimbursements for the Work associated with the EE/CA Work Plan are not tied to Work Milestones but to the concept of an annual disbursement, which is consistent with the reimbursement-related provisions of the AOC. UPCM has incurred reimbursable costs under the AOC that by their very nature must be incurred prior to completion of the RAWP, including legal fees to obtain access, and costs for the Work performed under the EE/CA Work Plan. The AOC clearly identifies these reimbursable costs, but does not specify a particular mechanism for processing them. UPCM has therefore submitted the Request in a form and manner that is consistent with the reimbursement-related provisions of the AOC (*i.e.*, (i) an annual request, that includes (ii) a complete and accurate summary of the necessary costs incurred and paid by UPCM for the Work covered by the Request, excluding costs not eligible for reimbursement per Paragraph 81.d., and (iii) a signed Certification per Paragraph 81.b.).

United Park believes the costs submitted under the Request should be presently reimbursed and appreciates your consideration of the further information outlined above.

Very truly yours,

HOLLAND & HART, LLP



Kevin R. Murray

KRM/ju
Enclosure(s)
cc: Kathy Cerise
Amelia Piggott

Summary List of "Work" Included Under the EE/CA Work Plan

- Investigation and preparation of the EE/CA
- All activities to conduct the EE/CA (including data evaluations and investigations of soils, sediments, surface water, shallow groundwater)
- All work to address data gaps
- General data collection and all other activities to prepare and complete the Draft Restoration Alternatives Analysis (data collection activities can include baseline data on species present/not present, quantification of existing resources, and collection of other data required for the HEA)
- Surface and shallow groundwater samples (Middle Reach, Floodplain Tailings area, SR 248 North Reach, P.C., West Reach, P.C. East Reach, Lower Silver Creek)
- Surface and subsurface soil and sediment data collection (P.C. West Reach, P.C. East Reach, Lower Silver Creek)
- All activities required under the SAP
- Site investigations to (i) fill data gaps, (ii) determine nature and extent of impacts in the wetland and floodplain areas, (iii) complete the EE/CA and RAA, (iv) determine the depth of impacted materials, (v) characterize surface and groundwater, and (vi) characterize subsurface soils and sediments
- Preparation of report summarizing data collection efforts associated with previous investigations
- Preparation of planning documents to guide field activities: SAP; FSP; QAPP; and HASP
- Preparation of the Site Characterization Report
- Preparation of the Streamlined Risk Evaluation

SCHEDULE 4



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

Ref: 8ENF-L

November 13, 2015

VIA EMAIL AND U.S.MAIL

Mr. Kevin Murray
Holland & Hart
222 South Main Street, Suite 2200
Salt Lake City, UT 84101

Re: Request for Reimbursement; CERCLA Administrative Order on Consent Docket Number CERCLA-08-2014-0003; Richardson Flat Site, Park City, Utah

Dear Mr. Murray:

This letter is in response to the request for reimbursement submitted by United Park City Mines Company (UPCM) pursuant to the Administrative Order on Consent, Docket Number CERCLA-08-2014-0003, whereby UPCM is performing work at the Richardson Flat Site in Park City, Utah (Site). We have carefully reviewed your letter of October 28, 2015, and Kerry Gee's letter of August 25, 2015, along with the relevant sections of the AOC. We continue to believe that the request is premature. This conclusion is based upon the explicit language of the AOC in addition to the intent of the parties expressed during negotiations.

Section XIX of the AOC is entitled "Disbursement of Special Account Funds" and sets forth in detail the terms under which UPCM is entitled to obtain reimbursement from the ASARCO settlement funds deposited into the Richardson Flat Disbursement Account. Paragraph 80 specifically addresses the timing of disbursements from the Richardson Flat Disbursement Account. Such disbursements are tied to UPCM's performance of actual cleanup and implementation of the remedy to be selected by the EPA and documented the Action Memorandum upon UPCM's completion of Site characterization work and the Engineering Evaluation/Cost Analysis (EE/CA). The terms and conditions of the reimbursement provisions of the AOC were the subject of extensive discussion during negotiations including both the timing and amount of such disbursements. The AOC explicitly captures the give and take that was negotiated by the parties. The EPA is not willing to reopen the AOC and renegotiate these provisions at this time. We are committed to promptly processing UPCM's requests for reimbursement when properly submitted after completion of a Work Milestone to be established in the Remedial Action Work Plan.

Please feel free to call me at 303.312.6904 if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Madigan", with a long horizontal flourish extending to the right.

Andrea Madigan
CERCLA Supervisory Attorney

cc: Kathryn Cerise, U.S. EPA
Amelia Piggott, U.S. EPA
Scott Wilder, U.S. EPA